UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARIN EARLINGTON,

Plaintiff,

-against-

HUNGRYROOT, INC.,

Defendant.

Jury Trial Demanded

Plaintiff DARIN EARLINGTON (hereinafter "Plaintiff"), by and through his attorneys, CASTILLO STEPHENS LLP, as and for his Complaint against Defendant, HUNGRYROOT, INC., (hereinafter, "Defendant") alleges upon personal knowledge as to himself and his own actions and upon information and belief as to all other matters as follows:

NATURE OF CASE

1. This is a civil action for damages and equitable relief based upon violations committed by Defendant of Plaintiff's rights guaranteed to him by: (i) the Fair Labor Standards Act ("FLSA") overtime provisions, 29 U.S.C. § 207(a); (ii) the New York Labor Law's ("NYLL") overtime provisions, N.Y. Lab. Law § 160; (iii) N.Y. Comp. Codes R. & Regs. ("NYCCRR") tit. 12, § 142-2.2; (iv) the NYLL's requirement that employers furnish employees with wage statements containing specific categories of information, N.Y. Lab. Law § 195(3), (v) the NYLL's requirement that employers furnish employees with a notice and acknowledgement containing specific categories of information at the time of hiring and every year thereafter, N.Y.

Lab. Law § 195(1), and (vi) (ix) any other claim(s) that can be inferred from the facts set forth herein.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq*. The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1367 over all state law claims.

3. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as all actions comprising the claims for relief occurred within this judicial district, and pursuant to 28 U.S.C. § 1391(b)(1), as one or more of the Defendant resides within the Southern District of New York.

PARTIES

4. At all relevant times, Plaintiff was or is a resident of the State of New York and is a "person" and an "employee" entitled to protection as defined by the FLSA, NYLL and the NYCCRR.

5. At all relevant times, Defendant is a foreign corporation with its principal place of business located at 23-23 Borden Avenue, Long Island City, New York 11101.

6. At all relevant times, Defendant owns and operates the business at the aforementioned location.

7. At all relevant times, Defendant is an "employer" and "person" within the meaning of the FLSA and the NYLL. Additionally, the Defendant's gross annual volume of sales or business done is not less than $500,000.00, and the Defendant is engaged in interstate

commerce within the meaning of the FLSA, as it handles goods and food products that are moved between the States, the combination of which subjects the Defendant, as an enterprise, to the FLSA's overtime requirements. Furthermore, all Defendant's employees, including Plaintiff, are individually engaged in interstate commerce, as they personally handle goods that have been and continue to be moved in interstate commerce. This independently subjects Defendant to the overtime requirements of the FLSA with respect to each individual employee.

8. Plaintiff seeks to bring this suit to recover from Defendant unpaid overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, pursuant to 29 U.S.C. § 216(b).

9. At all relevant times, the Defendant is and has been aware of the requirement to pay Plaintiff at the rate of one and one-half times his regular rate of pay for hours worked each workweek above forty but purposely chose not to do so.

BACKGROUND FACTS

1. At all relevant times, Plaintiff was an employee of Defendant and performed his duties for Defendant's benefit at the business at 23-23 Borden Avenue, Long Island City, New York 11101.

2. At all relevant times, the Defendant had a policy and practice of refusing to pay overtime compensation at the statutory rate of time and one-half to Plaintiff for hours worked in excess of forty hours per work week; to provide a legally sufficient wage statement as required; or to provide a notice and acknowledgement upon hiring as required by the NYLL.

3. Defendant hired Plaintiff in or around August 2015 as a production worker. As a production worker, Plaintiff made noodles, portioned out meals and meal components, packaged meals, and put the packages into storage.

4. Plaintiff was employed as a production worker from August 2015 through September 2015. When Plaintiff was hired, Plaintiff was told he would be paid at the rate of $11.00 per hour. Plaintiff typically arrived at 8:00 a.m. and left between 6:00 p.m. and 7:00 p.m., with his average time of completion of work at 6:30 p.m. However, during the time Plaintiff was employed as a production worker, the Defendant enforced a policy of having its production team lead, MAMADU WAGUY, who recorded Plaintiff's hours, note Plaintiff's start time as 8:30 p.m. and his end time as 5:00 p.m., or whenever WAGUY terminated his own workday, which was usually before Plaintiff stopped working for the day. Despite this practice, Defendant requested that the Plaintiff continue to work each day off the clock.

5. During this time, Plaintiff's paychecks typically reflected less than 40 hours of work each week. Plaintiff was later told by WAGUY that WAGUY was paid a bonus for keeping workers' weekly hours under 40. On one occasion shortly after he began his employment with Defendant, Plaintiff presented to WAGUY Plaintiff's own record of his hours worked. Plaintiff's next paycheck, dated August 28, 2015, reflected 8.83 hours overtime. After this incident, STRUCK told Plaintiff he cannot be paid overtime.

6. In or about September 2015, Plaintiff was promoted to shipping team lead. As a shipping team lead, Plaintiff packed boxes and loaded boxes onto trucks. Plaintiff performed this work alone through about November 2015, at which time Defendant contracted two other persons to assist Plaintiff with this work.

7. As a shipping team lead, Plaintiff worked from Monday to Thursday, from approximately 8:00 a.m. through approximately 7:30 p.m., and sometimes as late as 9:00 p.m. On Fridays, Plaintiff worked from approximately 8:00 a.m. to approximately 12:00p.m. Approximately one out of every two Fridays, Plaintiff worked until about 1:00 or 2:00 p.m. Defendant continued the same payment practices as when Plaintiff was employed as a production worker.

8. In or about late September 2015, Plaintiff complained to STRUCK about his pay. STRUCK thereupon included 10.5 hours overtime in Plaintiff's October 2, 2015, pay check, and thereafter converted Plaintiff to a "salaried" employee, paying Plaintiff $12.00 per hour for 40 hours each week. Plaintiff continued to work the same hours as before.

9. In or about November 2015, Plaintiff was promoted to quality control assistant. As a quality control assistant, Plaintiff gave work orders, oversaw the printing of labels, packed boxes (approximately four hours each day); made noodles; and performed other manual duties related to production.

10. While employed as a quality control assistant, Plaintiff worked from Sunday to Thursday, from 8:30 a.m. through approximately 7:00 p.m. daily, and on Friday from 9:30 a.m. to approximately 3:00 p.m., for which he was paid a "salary" of $720.00 per week. Plaintiff's paychecks reflected this "salary" as 40 hours work at $18.00 per hour.

11. In or about February 2016, Plaintiff was promoted to shipping manager. As a shipping manager, Plaintiff performed the same duties as shipping team lead, but had four other persons assisting him with these duties.

12. While employed as a shipping manager, Plaintiff worked from Monday to Friday, from 8:00 a.m. through approximately 8:00 p.m. or 9:00 p.m. each day. Approximately three

days per week, Plaintiff was required to start work at 6:00 a.m. On his days off, Plaintiff answered e-mails and took telephone calls from Defendant and at times purchased and delivered supplies for the preparation of meals to Defendant's facilities. On average, Plaintiff spent an additional four hours on each of his days off performing these duties.

13. As a shipping manager, Plaintiff was paid $720.00 per week, reflected on his pay checks as 40 hours work at $18.00 per hour. In or about March 2016, Plaintiff's weekly pay was increased to $800.00, reflected in his pay checks as 40 hours work at $20.00 per hour. On or about April 29, 2016, Plaintiff began receiving $832.50 weekly, reflected on his pay checks as 40 hours work at $20.00 per hour, plus a weekly bonus of $32.50.

14. In or about June 2016, Plaintiff's weekly pay was increased to $928.90, reflected in his pay checks as 40 hours work at $22.41 per hour, plus a weekly bonus of $32.50. In or about late June 2016, the $32.50 weekly bonus was eliminated from Plaintiff's pay.

15. In or about August 2016, Plaintiff was promoted to warehouse manager. As a warehouse manager, Plaintiff performed inventory control, which involved counting inventory and physically organizing Defendant's warehouse; packed orders into boxes; delivered the boxes to the FreshDirect shipping docks across the street from Defendant's warehouse; packed Whole Foods orders onto trucks; and received deliveries.

16. From August 2016 through October 2016, while employed as a warehouse manager, Plaintiff worked from Sunday through Friday. On Monday through Thursday, Plaintiff worked from 6:00 a.m. to 8:00 p.m.; on Friday, Plaintiff worked from 6:00 a.m. to 5:00 p.m.; on Sunday, Plaintiff worked from 10:00 a.m. to 6:00 p.m. Beginning in October 2016, Plaintiff's work schedule changed to Mondays, Tuesdays, Thursdays, Fridays and Saturdays from 6:00 a.m. to about 8:00 p.m. Also beginning in October 2016, Plaintiff typically worked three to four times

per month to 9:00 p.m. Plaintiff held the position of warehouse manager until February 14, 2017, at which time Plaintiff was informed that he was being laid off.

17. While employed as a warehouse manager, Plaintiff was regularly required to be "on call." While on call, Plaintiff responded to emails, took phone calls from his supervisors regarding locations of various items within the warehouse, or was asked to pick up products and deliver the products to the Defendant's facilities. Plaintiff estimates that he spent approximately four hours on each day off responding to emails and phone calls, or performing duties as indicated above.

18. As warehouse manager, Plaintiff initially earned $896.40 per week, reflected in his pay checks as 40 hours work at $22.41 per hour. In late September 2016, Plaintiff was given a pay increase to $1,057.69 per week, reflected in his pay checks as 40 hours work at $26.44 per hour.

FIRST CLAIM FOR RELIEF, UNPAID OVERTIME UNDER FLSA

19. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

20. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rate for any hours exceeding forty in a workweek.

21. As described above, Defendant is an employer within the meaning of the FLSA and Plaintiff is an employee within the meaning of the FLSA.

22. As also described above, Plaintiff worked in excess of forty hours each week, yet the Defendant failed to compensate Plaintiff in accordance with the FLSA's overtime provisions.

23. The Defendant's actions were in willful violation of the FLSA.

24. Plaintiff is entitled to the compensation he is legally due under the FLSA's overtime provisions.

25. Plaintiff is also entitled to liquidated damages and attorney's fees for the Defendant's violations of the FLSA's overtime provisions.

FOURTH CLAIM FOR RELIEF, UNPAID OVERTIME UNDER NYLL

26. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

27. N.Y. Lab. Law § 160 and NYCRR tit. 12, § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rate for any hours exceeding forty in a workweek.

28. As described above, Defendant is an employer within the meaning of the NYLL while Plaintiff is an employee within the meaning of the NYLL.

29. As also described above, Plaintiff frequently worked in excess of forty hours each week, yet Defendant failed to compensate Plaintiff in accordance with the NYLL's and NYCCRR's overtime provisions.

30. Defendant's actions were in willful violation of the NYLL and NYCCRR.

31. Plaintiff is entitled to the amount legally due to him under the NYLL's and NYCCRR's overtime provisions.

32. Plaintiff is also entitled to liquidated damages, attorney's fees, costs, and pre-judgment and post-judgment interest for Defendant's violations of the NYLL"s and NYCCRR's overtime provisions.

FIFTH CLAIM FOR RELIEF, FAILURE TO FURNISH WAGE STATEMENTS IN VIOLATION OF NYLL

33. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

34. N.Y. Lab. Law § 195(3) requires that employers furnish employees "a statement with every payment of wages containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the statement shall include the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the statement shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. Upon the request of an employee, an employer shall furnish an explanation in writing of how such wages were computed."

35. As described above, Defendant is an employer within the meaning of the NYLL while Plaintiff is an employee within the meaning of the NYLL.

36. As described above, Defendant willfully failed to furnish Plaintiff with wage statements containing the criteria required under the NYLL.

37. Pursuant to N.Y. Lab Law § 198(1-d), Defendant is liable to Plaintiff in the amount of $250.00 for each workday the wage statement has not been given.

38. For their failure, besides the statutory penalties, Defendant is also liable to Plaintiff for liquidated damages, attorney's fees and costs, and pre-judgment and post-judgment interest.

SIXTH CLAIM FOR RELIEF, FAILURE TO PROVIDE NOTICE AND ACKNOWLEDGEMENT UPON HIRING UNDER NYLL

39. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

40. The NYLL requires that an employer "provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary. Each time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement, in English and in the primary language of the employee, of receipt of this notice, which the employer shall preserve and maintain for six years. Such acknowledgement shall include an affirmation by the employee that the employee accurately identified his or her primary language to the employer, and that the notice provided by the employer to such employee pursuant to this subdivision was in the language so identified or

otherwise complied with paragraph (c) of this subdivision, and shall conform to any additional requirements established by the commissioner with regard to content and form. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the notice must state the regular hourly rate and overtime rate of pay."

41. As described above, Defendant in an employer within the meaning of the NYLL while Plaintiff is an employee within the meaning of the NYLL.

42. As described above, Defendant willfully failed to provide Plaintiff with any such notice and acknowledgement containing the criteria required under the NYLL.

43. Pursuant to N.Y. Lab Law § 198(1-b), Defendant is liable to Plaintiff in the amount of $50 for each workday the notice has not been given.

44. For their failure, besides the statutory penalties, Defendant is also liable to Plaintiff for liquidated damages, attorney's fees and costs, and pre-judgment and post-judgment interest.

DEMAND FOR A JURY TRIAL

45. Pursuant to the Federal Rules of Civil Procedure 38(b), Plaintiff demands a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

a. a judgment declaring that the practices complained of herein are unlawful and in violation of the aforementioned United States and New York State laws;

b. all damages that Plaintiff has sustained as a result of Defendant's conduct, including all unpaid wages Plaintiff would have received but for Defendant's misconduct;

c. liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;

d. Plaintiff's costs and disbursements incurred in connection with this action, including reasonable attorney's fees, expert witness fees, and other costs; and

e. pre-judgment and post-judgment interest, as provided by law.

Dated: April 14, 2017
New York, New York

Respectfully submitted,

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